

DECISION



12611 PL-11
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-197365

DATE: January 23, 1980

MATTER OF:

Uniflite, Inc. CDG00569

[Protest of SBA Determination That Awardee Was Responsible]

DIGEST:

1. GAO will not review protest concerning determination by Small Business Administration (SBA) to issue a Certificate of Competency (COC) to competitor except where protest concerns small business' compliance with definitive responsibility criterion contained in solicitation or where fraud is shown.
2. Where protest involves allegation that COC should not have been issued because small business bidder is not in compliance with definitive responsibility criterion, GAO role is limited to determining if SBA considered all vital information bearing on such compliance and if record indicates all information was not considered, suggesting to SBA that it reconsider its decision to issue COC.

DLG03667 Uniflite, Inc. protests the award of a contract to Polaris Marine, Ind. (Polaris) under invitation for bids (IFB) N00024-79-B-2722, issued by the Navy.

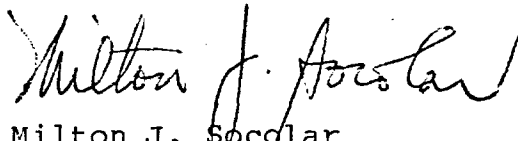
According to Uniflite, the Navy determined that Polaris, a small business, was not a responsible bidder and submitted the matter of Polaris' responsibility to the Small Business Administration (SBA) for the possible issuance of a Certificate of Competency (COC). SBA determined that Polaris was responsible and issued a COC. Uniflite contends that SBA did not thoroughly consider the unique requirements of this procurement and the special skills involved, that SBA is not qualified to assess the capabilities of potential contractors for a contract of this complexity, and that SBA erroneously issued a COC to Polaris.

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This Office, generally, does not review SBA's COC determinations because the law provides that SBA's determinations are conclusive. 15 U.S.C. § 637(b)(7) (Supp. I 1977). However, we review SBA's COC process in a limited number of situations. First, we consider protests where either a firm being considered for a COC or another interested party makes a prima facie showing of fraud on the part of Government officials. Dyneteria, Inc., 55 Comp. Gen. 97 (1975), 75-2 CPD 36. Second, a firm whose capabilities are evaluated by SBA will be heard if it appears that SBA has not considered information vital to a responsibility determination concerning such firm. Brimstone Equipment Co., B-195344, August 7, 1979, 79-2 CPD 95. In addition, we consider protests by third parties concerning SBA's issuance of a COC when a solicitation contains a definitive responsibility criterion and the issue raised involves a small business firm's compliance with that criterion. J. Baranello and Sons, 58 Comp. Gen. 509 (1979), 79-1 CPD 322; U.S. Eagle, Inc.; Reliable Building Maintenance Company, B-193773, August 2, 1979, 79-2 CPD 73. However, in the latter situation, our role is limited to suggesting that the SBA reconsider its decision if the record indicates that SBA did not consider vital information bearing on the small business bidder's compliance with the definitive criterion.

Except as indicated, we do not consider other types of protests concerning SBA's issuance of a COC because by law a COC is conclusive and the decision to issue or not issue one is based in large measure on subjective judgments which are not readily susceptible to reasoned review. Since this case involves a third party complaint about SBA's decision to issue a COC to another firm, and since there is no allegation of fraud, it is not appropriate for our review and therefore is dismissed. In light of our disposition of this matter, no useful purpose would be served by holding a conference as requested by the protester.


Milton J. Socolar
General Counsel